



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 2346-99  
23 November 1999

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show that he was retired by reason of physical disability.
2. The Board, consisting of Mses. Hardbower and Moidel and Mr. Flood, reviewed Petitioner's allegations of error and injustice on 18 November 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
  - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
  - b. Although enclosure (1) was not filed in a timely manner, the Board concluded it would be in the interest of justice to waive the statute of limitations and consider the application on its merits.
  - c. Petitioner was evaluated by a medical board on 9 June 1997, and given diagnoses of follicular center cell non-Hodgkin's lymphoma. The medical board recommended that he be placed on limited duty for a period of twelve months. A second medical board convened on 10 July 1998, and recommended that the case be referred to the Physical Evaluation Board (PEB) because there were no curative therapies for Petitioner's disease, and most patients with the disease ultimately die from it. Initially, the PEB found Petitioner fit for duty under the presumption of fitness (PFIT) rule, which applies to service members who have begun processing for non-disability retirement, or are within one year of mandatory retirement,

prior to the receipt of a medical board by the PEB. After determining that the PFIT rule did not apply in Petitioner's case, the PEB reevaluated the matter, and made preliminary findings that he was fit for duty. The PEB affirmed those findings on 8 December 1998. Petitioner accepted the findings of the PEB, but indicated that he intended to "...pursue other actions to review my case." The finding of fitness was approved by the President, PEB, on 9 December 1998. Petitioner was released from active duty on 31 March 1999, and was transferred voluntarily to the Retired List on 1 April 1999.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner was unfit by reason of physical disability at the time of his voluntary transfer to the Retired List on 1 April 1999, and should have been retired by reason of physical disability. In this regard, it concludes that his non-Hodgkin's lymphoma, which will in all likelihood cause his death, was active at that time, and would have precluded his from performing duties commensurate with his grade and experience had he not elected to retire.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

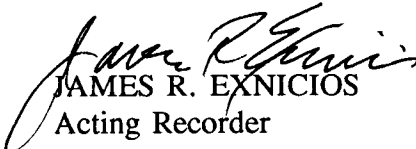
#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was permanently retired by reason of physical disability on 1 April 1999, pursuant to 10 U.S. Code 1201, with a disability rating of 100% under VA code 7715.

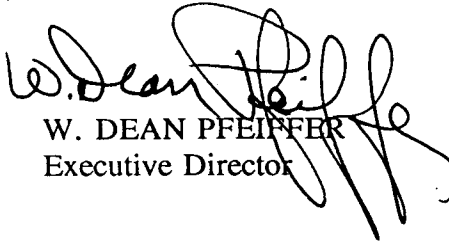
c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

  
JAMES R. EXNICIOS  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director